

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NIPPON SHINYAKU CO., LTD.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 21-1015 (GBW)
)	
SAREPTA THERAPEUTICS, INC.,)	
)	
Defendant.)	
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SAREPTA THERAPEUTICS, INC. and THE)	
UNIVERSITY OF WESTERN AUSTRALIA,)	
)	
Defendant/Counter-Plaintiffs,)	
)	
v.)	
)	
NIPPON SHINYAKU CO., LTD.)	
and NS PHARMA, INC.)	
)	
Plaintiff/Counter-Defendants.)	

**SAREPTA THERAPEUTICS, INC. AND THE UNIVERSITY OF WESTERN
AUSTRALIA’S MOTION TO EXCLUDE CERTAIN OPINIONS AND TESTIMONY OF
DRS. CHRISTINE C. ESAU, MICHELLE L. HASTINGS,
AND MATTHEW J.A. WOOD**

Pursuant to Federal Rule of Evidence 702, Sarepta Therapeutics, Inc. (“Sarepta”) and the University of Western Australia (“UWA”) respectfully move for the Court to exclude opinions of Nippon Shinyaku Co., Ltd. and NS Pharma, Inc.’s experts regarding state of mind of others. Specifically, Sarepta and UWA request exclusion of:

- the opinions and testimony of Dr. Christine C. Esau relating to willful infringement, including Sections XI.D and XII.D of her Opening Expert Report and Paragraphs 16-18 in her Reply Expert Report, served on September 8, 2023 and October 27, 2023, respectively;

- the opinions and testimony of Dr. Michelle L. Hastings relating to willful infringement, including Section VIII of her Reply Expert Report, served on October 27, 2023; and
- the opinions and testimony of Dr. Matthew J.A. Wood relating to conception, including Section V of his Opening Expert Report and Section II of his Reply Expert Report, served on September 8, 2023 and October 27, 2023, respectively.

The grounds for this Motion are set forth in the Opening Brief in support thereof, filed concurrently.

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December 11, 2023

RULE 7.1.1 CERTIFICATION

Pursuant to D. Del. LR 7.1.1, the subject of this motion was raised with counsel for Nippon Shinyaku Co., Ltd. and NS Pharma, Inc. during a telephonic meet and confer that included Delaware counsel for all parties, and the parties were not able to reach agreement.

/s/ Megan E. Dellinger

Megan E. Dellinger (#5739)

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)	
Plaintiff/Counter-Defendants.)	

**[PROPOSED] ORDER GRANTING SAREPTA THERAPEUTICS, INC. AND THE
UNIVERSITY OF WESTERN AUSTRALIA’S MOTION TO EXCLUDE CERTAIN
OPINIONS AND TESTIMONY OF DRS. CHRISTINE C. ESAU, MICHELLE L.
HASTINGS, AND MATTHEW J.A. WOOD**

Having considered Sarepta Therapeutics, Inc. (“Sarepta”) and the University of Western Australia’s (“UWA’s”) motion to exclude the opinions and testimony of Dr. Christine C. Esau relating to willful infringement; the opinions and testimony of Dr. Michelle L. Hastings relating to willful infringement; and the opinions and testimony of Dr. Matthew J.A. Wood relating to conception, and all related papers filed in connection therewith,

IT IS HEREBY ORDERED that Sarepta and UWA’s Motion is **GRANTED**: the testimony and opinions of Nippon Shinyaku Co. Ltd.’s and NS Pharma, Inc.’s experts regarding state of mind of others are excluded as follows:

- the opinions and testimony of Dr. Christine C. Esau relating to willful infringement, including Sections XI.D and XII.D of her Opening Expert Report and Paragraphs 16-18 in her Reply Expert Report, served on September 8, 2023 and October 27, 2023, respectively;
- the opinions and testimony of Dr. Michelle L. Hastings relating to willful infringement, including Section VIII of her Reply Expert Report, served on October 27, 2023; and
- the opinions and testimony of Dr. Matthew J.A. Wood relating to conception, including Section V of his Opening Expert Report and Section II of his Reply Expert Report, served on September 8, 2023 and October 27, 2023, respectively.

IT IS SO ORDERED, this ____ day of _____, 2024.

The Honorable Gregory B. Williams
U.S. District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on December 11, 2023, upon the following in the manner indicated:

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